

IN THE UNITED STATES DISTRICT COURT

CENTRAL DIVISION \_\_\_\_\_

**FILED**

MAR 11 2013

*[Signature]*  
CLERK

*Thomas O. Morgan*

Verses-- plaintiff,

CV 13-3012

AFFIDAVIT,

( WRIT OF MANDAMUS MOTION TO QUASH  
: THE WARRANT, 'DOUBLE JEOPARDY BAR'.

Hugh's County Sheriffs office,

Douglas Weber SDSP.

( BY 28 USC 2255.

Respondent

\*\*\*\*\*

Jurisdiction pursuant to United States Supreme Court Rule 20.3 upon

.invoking the district court jurisdiction to remedy. The underlying U.S.S.Ct is requiring the fourth amends  
privilege's 28 USC 1343(3), Const; right violators. Illegal seizure .see enclosures \_\_\_\_\_

Arrest Warrant Oct 18 2012. Case no. 12-30157 by United States District Court,  
[CENTRAL DIVISION OF HUGH'S COUNTY SD, [OCT 19 2012 FRI]

TOGETHER WITH THE U.S. MARSHALS 'DETAINDER', OCT 25 2012.

Plaintiff the undersigned comes now was originally arrested charged and 'plead guilty', taken the  
Plea agreement. Which was 2 years probation and fine \$290.00. Wherefore, Aug 15 2012, held upon arrest  
through h16th and the 22<sup>nd</sup>. Upon that, date went to arraignment, as when that plead guilty.

Requires now herein continuance to ends of justice inquiry. *FN 1*

Because applicant is incarcerated in a 'State facility South Dakota State of South Dakota Penitentiary.

[Who are detaining me at present by that Warden Weber?]

This movant wish's to 'quash the warrant and illegal seizure, in violation of fourth amendment to the U.S. const.  
Amendment;

**FN 1** pursuant to motion pending in this district ct, Congress enacted the Antiterrorism and Effective Death  
Penalty Act of 1996(AEDPA), 110 Stat. 1214. Section 102 of AEDPA amends the statutory provision which had  
required state prisoners to obtain a certificate of probable cause appealing denial see(B) final order .

In order under section 2255, 28 USC § 2253(c) (1) (Supp 1998). Certificates of appealability may issue "only when applicant has made a "substantial showing of a denial of a Constitutional right." 2253(c) (2)'s @ clause. Applicant is being denied Fed Constitution right guarantee under the fourth amendment, Fifth and sixth by the fourteenth. As the eighth. To U.S. Constitution.

Federal Law clearly established, invoking this Courts jurisdiction title 28 USC 1254(1).

Provides: in relevant part, cases in the fed court appeals may be reviewed by the U.S.S.Ct, following methods--upon district court review. (On procedural ends of justice inquiry).

(1), A Writ of certiorari granted upon petition of any party to any civil or criminal case before or after rendition judgment or degree...

This applicant arises by motion to quash the warrant and illegal seizure on violation of fed Laws. -Fourth amendment to U.S. Const, Fed Const right violators under color of Fed law.

By the due process clause right to remain free' of liberty interest, to be twice tried for the same offense. The district court obtaining warrant must be reversed as has no legal force and effect, as was obtained in violation, [of DOUBLE JEOPARDY]...

CLAUSE ... fn2.

See, United States v Frayer 9 F 3d 1367, 1372 (8th Cir 1993). (Citing Dixon ¶ 113 S.Ct. at 2859, CERT, DENIED. 115 S.ct. 77(1994).

Because the Court cannot circumvent obtaining a plea agreement than recharge for the following same offense. As const, substantial right to be free of illegal warrant obtained detainer now for your review, to cannot survive the 'same element test inquiry. Citing. United States v Bennett 44 F 3d 1364 (1995) issue raises, importance of first impression by the first impression, by the first and fourth amendments to U.S. Const, privilege and Const right 28 USC 1343(a)(3) and will be lost if review must await final judgment. This U.S.Sup, Ct. has jurisdiction pursuant to Mandamus review of orders discovery materials jurisdictional error, reviewability as by applicant hereby invokes that right cause structural defect. This must survive the Blockburger" test, meaning each offense requires proof of a fact the other does not. See each for remedy.

In order to support a claim of 'double jeopardy', a defendant must show that the two offenses are in law and fact the same offenses. *United States v Okolie* 3 F 3d 287,289(8th cir 1993).cert, denied. 127 L.Ed 2d 551,114 S.ct. 1203(1994). See also, *United States v Benefield* 874 F 2d 1503, 1505 (11th Cir.1985).

Because defendant bears the initial burden of showing non-frivolous claim of double jeopardy, .*Okolie* 3 F 3d at 289.

Once threshold is met, burden shifts to government to show by a preponderance of evidence that the two indictments's at issue involve two separate offenses.

The right of the people to be secure in the persons as applies to the States by the due process cause within whom is currently holding him or her.  
Provisional deprivation to be secure of illegal seizure shall not be violated.  
[Cause of action structural defect.]\_\_\_\_\_--

**FN2**

***The Double jeopardy clause of the Fifth Amendment declares,  
"Shall any person be subject to for the 'same offense' to be twice put in jeopardy of life or limb,"U>S. Const. Amends fourth. Under the clause a defendant is protected from both successive prosecution and multiple punishments for the same criminal offense.\_\_\_\_\_---***

**Certificate of service**\_\_\_\_\_

**Petitioner above the entitled 'writ of habeas corpus was placed in the U.S. mail first class prepaid. For disposition, one true and correct copy to clerks office under penalty of perjury...**

**Sent to.** Clerks Office U.S.

District Court

225 South Pierre Street  
Pierre, S.D. 57501

**Dated this** February 25<sup>th</sup> **Day of** February, 2012.

**Petitioner signature,** [Signature]

**My term expires, stamp seal** 11-8-2016

**Commissioner signature.** Al Madsen

